Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM, 1993

ROBERT G. STEELE, Petitioner

v.

STATE BAR OF MONTANA ET AL

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a state bar, through its committee on character and fitness, requires an applicant to the bar to prove good moral character and general fitness to practice law, does it violate due process by failing to consider all the evidence and evaluating it in total?

2. Does a state bar, through its committee on character and fitness, violate due process and equal protection by employing a standard that is an unascertainable standard?

3. Does a state bar committee on character and fitness violate due process when accusing an applicant of making omissions on his application by refusing to identify all the omissions?

4. Does a determination, by a state bar committee on character and fitness, of whether an applicant violated a law when

the Committee did not identify the law, violate due process?

5. Does an evaluation, by a state bar committee on character and fitness, of whether an applicant neglected professional responsibilities, when the Committee did not identify any responsibilities or how they were neglected, violate due process?

6. Does a state supreme court abuse its discretion when upholding a decision by a state bar committee on character and fitness when the findings of fact relied on by the Committee either lacked sufficient specificity so that they could be reviewed, or were unsupported by substantial evidence.

LIST OF PARTIES

The parties to the proceedings below were the petitioner Robert G. Steele and the respondent Committee on Character and Fitness of the State Bar of Montana.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ROBERT G. STEELE, Petitioner

v.

STATE BAR OF MONTANA ET AL, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

The petitioner Robert G. Steele respectfully prays that a writ of certiorari issue to review the opinion of the Supreme Court of the State of Montana, entered in the proceeding entitled In Re the Petition of Robert G. Steele on December 22, 1993.

OPINIONS BELOW

The findings of fact, conclusions of law, and final decision of the Committee on Character and Fitness of the State Bar of Montana is reprinted in the appendix hereto, p. 1a, infra.

The opinion of the Supreme Court of the State of Montana is reported at 865 P2d 285, 50 SR 1649, and is reprinted in the appendix hereto, p. 18a, infra.

Justice Trieweiler's dissenting opinion is reprinted at 55a., infra.

JURISDICTION

The Supreme Court of the State of Montana issued its final decision in this matter on December 22, 1993. The jurisdiction of this Court to review the judgement of the Supreme Court of the State of Montana is invoked under 28 USC §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V to the United States Constitution provides, in pertinent part:

> "No person shall...be deprived of life, liberty, or property, without due process of law..."

Amendment XIV to the United States Constitution provides, in pertinent part:

> "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner, Robert G. Steele, has been denied the right to practice law notwithstanding that he has never previously been accused of wrongdoing and has produced substantial evidence of character and fitness. Petitioner has:

1. Never been accused of an ethical violation,
2. Never been accused of a crime (except DUI),
3. Never been sued (except for divorce), and
4. Never left a bill unpaid (except certain taxes under the circumstances described below).

Petitioner has been licensed as a certified public accountant in Montana since 1970. In 1990, anticipating graduation from the University of Montana

School of Law in 1991, he applied to the State Bar of Montana to take the February, 1991, bar exam. His application was denied by the Committee on Character and Fitness of the State Bar of Montana. After two hearings the Committee issued its Findings of Fact, Conclusions of Law, and Final Decision, denying the application. On February 2, 1993, Steele petitioned the Supreme Court of the State of Montana to review the Committee's denial.

The Petition alleged that the Committee's reasons for denial lacked substance and were in reality attempts to justify compliance with a mandate contained in a letter from the IRS wherein IRS opposed petitioner's admission to the bar. The Committee issued disguised and unsubstantiated reasons for denying petitioner's application with the result that the bar deprived petitioner of his rights secured by the Fifth and Fourteenth

Amendments. The only valid reason cited by the Committee was that petitioner owed back taxes. To this error petitioner had freely admitted.

Petitioner began his career in 1970 with the accounting firm of Peat, Marwick, Mitchell, and Co. He has been a self-employed accountant since 1974. In 1981 he became associated with an organization called the Golden Mean Society (GMS). GMS advocated to its members that certain actions of the Internal Revenue Service (IRS) were of questionable legality.

The record does not explain specifically what GMS advocated or how. The IRS claimed in its letter to the Committee that GMS "advocates violation of the United States Tax laws". Contradicting this statement is the fact that the Organization was under criminal investigation by IRS for over ten years

and yet none of the alleged "advocates" was ever accused of a crime.

Whatever GMS advocated, Petitioner's involvement was simply to offer the normal type of CPA services to GMS members at a discounted rate in exchange for office facilities provided by GMS. Petitioner did not promote GMS philosophy or advocate violation of the law.

Shortly after he began his association with GMS, petitioner became aware that he was the subject of a criminal investigation by IRS because of his association with GMS. On the basis of this criminal investigation, petitioner refused to supply certain information on his tax returns. IRS never challenged the validity of these actions nor the returns.

In 1987, IRS dropped the criminal investigation and petitioner responded by filing complete returns for all of the years for which he had previously claimed

Fifth Amendment protection. These returns resulted in substantial taxes due.

When petitioner did not pay the taxes, which included substantial increases for penalty and interest, IRS instigated another criminal investigation to determine whether petitioner's failure to pay was willful. This investigation also resulted in the determination that petitioner had not violated the law.

In the summer of 1990, an agent for the IRS informed petitioner that the second investigation was over. He also asked if the petitioner would assist IRS in future investigations of suspected tax offenders. Petitioner agreed to do so and also advised the agent that he intended to work out a plan to pay his own back taxes once he opened his law practice.

Petitioner applied to the bar on November 15, 1990, to take the February, 1991 exam. On his application, petitioner

disclosed that he owed back taxes, the approximate amount, that he originally filed protest returns for 1982 - 1986, and that he was working with IRS to establish a plan to pay the amounts owed once he finished law school. He also disclosed the name and telephone number of the special agent who conducted the investigations, but did not specifically state that "he had been under criminal investigation."

The bar denied petitioner's application stating that the above actions amounted to violations of the law, neglect of financial obligations, and neglect of professional obligations. The bar further claimed that petitioner made false statements including omissions.

Petitioner responded by requesting that the bar identify the laws he was alleged to have violated, the professional ethics he was alleged to have violated, and the facts he was alleged to have

omitted. The bar's attorney refused to supply the information and petitioner appealed to the full Committee which also refused. At petitioner's final hearing, he once again appealed to the Committee to assist him by identifying the problems so that he could respond. Again, they did not comply.

The opinions conclude that petitioner violated the law and admitted doing so. This determination is despite the fact that IRS had determined that petitioner had not violated the law. The court's dissenting opinion points out that the Committee's determination is erroneous and the result of a lack of understanding by the Committee member.

The finding that petitioner violated professional ethics is contrary to the fact that petitioner has never before been

accused (not even by IRS) of doing so and there was much evidence that petitioner represented many clients over a period of twenty years to the clients' satisfaction. Many professionals provided affidavits supporting petitioner's ethical commitment. The opinions do not contain any reference to this evidence nor any evaluation thereof, nor do they refer to any specific rules or standards.

The issue of omissions is without any merit whatsoever. Only in the Committee's final opinion does it identify all of them. There are three alleged omissions:

1. Failure to point out on petitioner's application that his qualification to take the exam was contingent on his graduation from school because he needed a faculty waiver of a required course,

2. Failure to use the words "criminal investigation" in his disclosures about his dealings with IRS on his application. (this one was disclosed before the final opinion), and

3. Failure to disclose on petitioner's application a suit against the IRS that petitioner won in the Ninth Circuit and, as a result, received a refund.

The first two alleged omissions were not omissions at all and petitioner was never given the opportunity to explain the third because it was not until the Committee's final decision that petitioner learned that the case had been omitted from his application. None of the three have any bearing on character and fitness.

The Montana court justifies affirmance by trying to twist the facts to sustain a finding that petitioner admitted violating the law. It alludes to its difficulty in so doing on page 36a, infra. At the same time, the court makes the accusation that there was "difficulty of obtaining a direct answer from Steele".

The dissenting opinion points to the error of this finding on pages 37a and 38a, infra. A reading of the referenced material on page 35a reveals that petitioner was trying very hard to answer the questions fully and truthfully. In respect to the court's conclusion that petitioner's failure to file tax returns was a violation of IRS regulations, IRS, itself, never directly made such an allegation. In fact, the District Counsel for IRS, during the hearing before the Committee on February 28, 1992, when asked that very question, admitted that it was

not a violation under the circumstances.

The court concludes with the statement on page 36a, infra that "The record demonstrates that Steele neglected both his financial and professional responsibilities." The court justifies these conclusions by stating that the record does not disclose any willingness on the part of Steele to pay the full amount of taxes owed and that Steele, as a CPA was aware of the tax laws.

The court is not making an honest summary of the "record." The fact that it feels it must rely on "the record" is illustrative that it cannot apply an objective standard to sustain its case.

What the record really demonstrates is:

1. Petitioner has never been sued by a creditor,

2. Petitioner made payments to his ex-wife

while attending law school even though it meant sleeping in his car,

3. Petitioner has borrowed up to $30,000 from banks on his signature alone and always paid it back,

4. Petitioner has never had a complaint filed against him by a client,

5. Petitioner has represented many clients before IRS, yet IRS has never filed a complaint against him,

6. IRS has admitted that petitioner always complied with the provisions of Circular No. 230 which prescribes detailed procedures and severe penalties in respect to taxpayer representatives,

7. Petitioner could declare bankruptcy in respect to his taxes but prefers to work it out because it was the result of a mistake he made,

8. Petitioner had agreed with IRS to make payments on the full amount owed upon entering practice as an attorney,

9. The offer-in-compromise was only a first offer and an attempt to work something out with IRS since his practice of law is being delayed and it was all he could offer,

10. Petitioner is highly respected for his ethical commitment by many attorneys and other professionals who have worked with him, and

11. District Counsel for IRS stated in a letter to the Committee that "The Internal Revenue Service opposes Robert G. Steele's admission to the State Bar of Montana."

The opinions consistently refer to the "record" as support for every allegation. The court alleges violations of law but doesn't specify the law. It wasn't willful failure to file and it wasn't willful failure to pay, so one can only wonder what law they think was violated.

The court alleges violation of professional responsibilities but it doesn't specify how this can be. One can only speculate that the Committee believes that a CPA violates his responsibilities by becoming delinquent on his individual taxes. If so, they are rewriting both IRS and CPA regulations, as well as their own. IRS acknowledged that petitioner has never had a complaint filed against him. If being behind on individual taxes is sufficient to establish grounds for denial to practice before IRS, then IRS should formally establish that criteria. If the bar wishes to employ that criteria, then it should formally do so. To randomly apply it is a denial of equal protection.

The court claims that petitioner had the burden of proving by clear and convincing evidence that he is possessed of good moral character and that he has

had the opportunity to do so. This approach implies that all the evidence will be considered and weighed. In a determination of something as abstract as "character," all the relevant evidence must be considered. To point to an isolated instance and claim it proves lack of character is foolishness unless that instance is so egregious that it would, as a matter of law, override everything else.

Instead, the Montana opinions consist of carefully characterizing selected evidence to justify the Committee's predetermined obedience to IRS. Petitioner's excellent track record is not mentioned. Furthermore, the opinions do not really address the sole issue which is:

Should a CPA with a 20-year faultless professional record be denied the right to practice law because he is delinquent on a

personal debt?

The Committee should have evaluated the specific facts and circumstances surrounding the debt. These include:

1. IRS retaliated against petitioner by placing him under criminal investigation because he associated himself with GMS.

2. Petitioner retaliated against IRS by claiming Fifth Amendment protection from the investigation and withholding estimated tax payments.

3. IRS could have prepared petitioner's returns from its own estimates and on that basis, assessed a tax, but chose not to.

4. IRS dropped the investigation and Petitioner filed returns which, for the first time, assessed a tax.

5. When petitioner didn't pay the tax assessed, IRS instigated another investigation to determine if petitioner was guilty of willful failure to pay.

6. IRS determined petitioner was not guilty of wilful failure to pay and dropped the second investigation.

7. Petitioner did not pay because: a) he lost his investment capital in the markets, b) he gave up his remaining property in a divorce settlement, and c) his income was diminished upon entering law school.

8. Petitioner met with the IRS criminal investigation division to discuss his liability and how he could be of future service to the agency.

9. The District Office of IRS re-instigated their retaliatory actions by opposing petitioner's admission to the bar and suggesting various improprieties on the part of petitioner.

10. Petitioner examined two IRS employees, deposed two others, and issued additional interrogatories to one of those deposed.

11. The only IRS allegation that survived was that petitioner was delinquent on his taxes.

The Committee should have evaluated the above facts and any others and determined what indication they provide as to moral character. The Committee should ask whether the facts illustrate good or bad moral character. Is it immoral to oppose the IRS? Is there any indication that IRS may have acted in bad faith? Is it a violation of professional responsibilities to oppose an agency that acts in bad faith?

Instead of making the above evaluation, the Committee simply found that, based upon the record, the Applicant would be "... unable or unwilling to act ... with unquestionable integrity." This standard is the Committee's license to

justify any denial it so wishes and to further avoid making a legitimate legal analysis of the evidence. It is a standard that God could not pass. Due process requires more. Equal protection requires more.

Unfortunately, sufficient information with which to make a good equal protection argument is not available because it is kept confidential by the bar. However the following excerpt from a local newspaper article entitled "Discipline not the end of law career" illustrates the situation:

> McKeon was disbarred after he was convicted in 1974 of stealing from the Montana worker's compensation system. The state Supreme Court reinstated him as a lawyer in 1982. Then the court censured him last year, after he was convicted of shoplifting from a drugstore in Anaconda. He remains eligible to practice.

Bozeman Daily Chronicle, February 16, 1994.

REASONS FOR GRANTING THE WRIT

Since its integration, the bar has become increasingly susceptible to manipulation by outside interests, including the Internal Revenue Service. This susceptibility threatens the checks and balances provided by the doctrine of separation of powers embodied in the Constitution of the United States. This fundamental concept must be protected by mandating that the bar operate according to ascertainable standards with fairness and objectivity.

The Court addressed this problem nearly forty years ago in *Konigsberg v. State Bar of California Et Al*, 353 U.S. 252. The Court explained:

> We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an

> arbitrary or discriminatory manner nor in any way to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to attain that goal. It is also important, both to society and the bar itself that lawyers be unintimidated - free to think, speak, and act as members of an Independent Bar.

Id., at 273.

Since *Konigsberg*, the increasingly arbitrary power that the bar wields over attorneys has been parallelled by increasing distrust by the public. The public views attorneys as no longer serving primarily the interests of their clients. The instant case illustrates why this is happening.

The branches of government are to be separate according to the provisions of the Constitution in order that they serve as checks and balances, each upon the

others. The executive branch is to exercise only carefully prescribed powers over the judicial. But the bar presents a unique problem in that it is difficult to structure a regulating body that is not executive in nature and effect.

The danger is that when the executive branch controls membership in the judicial, the judicial is no longer free to employ its review powers to curb unconstitutional action by the executive branch. The rapidly expanding executive branch is then free to abuse citizens' rights and legal process in administrative actions and otherwise.

For example, if the bar permits IRS to oppose membership of CPA's who have been successful taxpayer representatives, taxpayers will be further deprived of the due process of law. Ultimately, taxpayers' perception of injustice within the system will lead to its unraveling.

The potential for abuse in this unique situation is apparent. It requires that the bar be structured so that it must function with a minimum of individual discretion. It must employ objective, ascertainable standards. It must be required to substantiate its actions with specific facts rather than "based upon the entire record" or upon an applicant's "demeanor". It must not be allowed to deny applications on the basis of harmless errors or omissions.

The rights of minorities and the rights of each citizen, when dealing with the bureaucracy, depend upon freely allowing bar membership to people with new ideas, unpopular political views, outspoken personalities, and the courage to identify improprieties and advocate change. Whenever denial of bar membership smacks of these reasons, reversal should be a matter of policy.

CONCLUSION

In order to insure that our government function according to the basic doctrine of the separation of the powers of government, this petition for certiorari should be granted. Admission to the judicial branch, now controlled by an integrated bar, has become a matter of favor and grace, subject to the whims of executive power seeking to undermine judicial checks and balances. This matter should be remanded to the Supreme Court for the State of Montana with instructions that it develop and activate objective, ascertainable standards for determining character and fitness for admission to the bar. The process should include an evaluation to determine whether equal protection has been afforded.

Respectfully submitted,

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March 10, 1994

APPENDIX A

BEFORE THE COMMITTEE
ON CHARACTER AND FITNESS
OF THE STATE BAR OF MONTANA

* * * * * * * * * *

In the Matter of

ROBERT G. STEELE

* * * * * * * * * *

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION

* * * * * * * * * *

The application for admission of Robert G. Steele to the State Bar of Montana was finally submitted to the Committee on Character and Fitness (Committee) on July 22, 1992.

The Committee having heard testimony and having reviewed all other evidence submitted to it and contained within its files, now states the following:

PROCEDURAL BACKGROUND

1. Applicant applied for certification for the February, 1991, bar exam.

2. On December 26, 1990, the Committee denied that certification, stating in its letter that the revelation of unlawful conduct and neglect of financial responsibilities were reasons for the denial. In that denial letter the Committee noted the Applicant had applied to take the February, 1991, exam when he was not eligible.

3. In response to the denial on December 26, 1990, the Applicant submitted documents and a letter of explanation.

4. On February 14, 1991, the Committee again denied the Applicant's certification and sent notice of his right to an informal hearing.

5. On February 20, 1991, the Applicant filed a request for reconsideration.

6. On March 12, 1991, the Committee sent notice to the Applicant of an informal hearing to be held pursuant to Section 4(b) of the Rules of the Committee.

7. The informal hearing was held on May 1, 1991.

8. On August 23, 1991, the Committee denied certification and sent formal notice of the denial to the Applicant. The notice provided five reasons for the denial: violation of Section 3(c)(1), unlawful conduct; violation of Section 3(c)(3), making of false statements, including omissions; violation of Section 3(c)(6), abuse of legal process; violation of Section 3(c)(7), neglect of financial responsibilities; and violation of Section 3(c)(8), neglect of professional responsibilities.

9. the notice of denial contained information regarding the procure for reconsideration.

10. The Applicant requested reconsideration on September 20, 1991.

11. On October 9, 1991, the Committee sent notice to the Applicant of an October 30, 1991, hearing.

12. On November 6, 1991, the Applicant formally requested a continuance of the hearing; the hearing was rescheduled for March 5, 1992.

13. On March 5, 1992, a hearing was held. The Applicant was present without counsel. Members of the Committee, its administrative assistant, and its counsel were present, also. During the hearing the Applicant discovered that witnesses necessary for the presentation of his case were unavailable. After testimony was given by those present, the hearing was continued. On March 25, 1992, depositions of Anita Teichrow and Jay Erickson were held pursuant to the Committee's direction as a part of the hearing process. Because

of objections raised during the taking of these depositions, the Committee allowed the Applicant to send interrogatories to Jay Erickson; the answers to those interrogatories were received by the Committee on May 26, 1992.

14. The Applicant filed his final position and summation on June 12, 1992.

FINDINGS OF FACTS

1. On August 8, 1973, the Applicant was issued Certified Public Accountant (CPA) Certificate No. 639.

2. Peat, Marwick, Mitchell and Company employed the Applicant from 1970 through 1972.

3. Since 1974 the Applicant has been self-employed as a CPA; from 1974 to 1981 his practice was in Bozeman; since 1981 his practice has been in the Missoula area.

4. Applicant entered law school in

September 1987, completed the first two and one-half years, and withdrew an March 13, 1990.

5. The Applicant failed to pay taxes for years 1982, 1983, 1984, 1985, and 1986. Applicant presently owes the Internal Revenue Service (IRS) more than $209,000; he made an offer of compromise to the IRS of $3,544, slightly more than one percent of the amount owed. Applicant presently owes the State of Montana Revenue Department more than $20,824; he made an offer of compromise of $381, which is slightly higher than one percent of the amount owed. These officers in compromise were made April 30, 1991, after the Committee made inquiry. The Applicant never denied that the tax was due and owing; money available to pay a portion of the tax was spent otherwise. Applicant further acknowledged this was a violation of the law and explained his actions as

follows:

MR. SULLIVAN: Let me ask you: Did you actually sit down and keep figures for your income, for deductions, and compute what a tax would have been in 1982?

MR. STEELE: No, I did not do that.

MR. SULLIVAN: Why is that?

MR. STEELE: I believed that would never be necessary. I believed it was all going to change. I believed that the IRS was going to see the error of their ways and we were going to have a new tax system.

MR. SULLIVAN: And you believed that the government was not going to seek to collect what they felt was your legitimate tax due and owing for 1982 on through those years?

MR. STEELE: I believed that at some time there would be a settlement. You know, at the time, I was prepared to lose; and at that time, I had some money and I was investing at that time. At that time, I always had an open mind. If they could show me where we were wrong and convince me that we were wrong, I was willing to file the return; and I had the money at that time to pay it.

MR. SULLIVAN: Maybe my

question isn't very clear. I get the impression that back then you felt that it was an invasion of privacy to provide all of this information about your earnings and your deductions, but I am a little unclear.

Are you saying it was a violation of the constitution to tax you?

MR. STEELE: Of course not.

MR. SULLIVAN: So did you set aside any money to pay tax, or is it your position that you owed no tax?

MR. STEELE: No, no, no. We were wanting a better form of taxation; not no taxes. I mean, that's ridiculous. A flat tax, like it's been proposed, a national sales tax, something like that, that wouldn't be such an intrusion into privacy.

I had the money. I didn't put it in a trust fund and keep it aside for the IRS, and I eventually ended up losing most of that money in my investments. At that time, it was not a problem with me that I was going to have to pay these taxes, pay some taxes of some kind.

MR. SULLIVAN: I guess I an confused then as to why you didn't file this return, figure out what, at least, you owed the government and pay them those

taxes and then fight about the information that was supposed to be disclosed.

MR. STEELE: Well, the amount itself is an indication of how much you made. It would have been better to do it that way. I wish I would have done it that way. At that time, that was the justification for not doing it that was that, we give them the money, then they are going to know how much you made. It's the same thing.

If you pay them, do you have a standing to challenge it? Is it moot? Like, if you pay a traffic ticket, can you continue to challenge it? A lot of these things sound dumb to me now, but they were real at that point.

(Informal hearing transcript, May 1, 1991, page 18 line 8 through page 20 line 17)

MR. SULLIVAN: Mr. Steele, when you did file with the IRS, it was only after they assured you that you would not be criminally prosecuted?

MR. STEELE: Yeah.

MR. SULLIVAN: And that was asserting your Fifth Amendment right not to incriminate yourself of a crime?

MR. STEELE: Right.

MR. SULLIVAN: So you, yours-

elf, had concern that you may be incriminating yourself in asserting that right before the IRS.

MR. STEELE: Yeah.

MR. SULLIVAN: When you were examining Ms. Cochran, you agreed with her that willful failure to pay taxes was a violation of the criminal statutes; correct?

MR. STEELE: That's right.

MR. SULLIVAN: And if somebody squandered money and didn't pay their taxes, that would be a violation of the Codes.

MR. STEELE: No, not unless they intentionally did it to beat the taxes.

MR. SULLIVAN: If they knew they had taxes and spent the money somewhere else, you would agree with me that that wasn't in compliance with the tax laws and would fall within a criminal statute?

MR. STEELE: I think there's more to the definition of willfulness than that. I mean I think if we really went down to the cases and to the law, it's going to be more like if you had the money and didn't pay them when they demanded it, then you are willful.

MR. SULLIVAN: Let me ask you this, if you have the money when you knew you owed taxes and you don't pay it, you would not say that was willful?

MR. STEELE: Well, then we get into a definition of "owed." Okay, that's true.

MR. SULLIVAN: As a CPA, under the rules and regulations for paying taxes as a CPA, you prepare a return based on the figures you have for someone. Based on that, you come up with a tax that somebody owes.

MR. STEELE: Right.

MR. SULLIVAN: If they have the money to pay that tax at that time and they do not pay that tax, you would agree with me that that would be a willful failure to pay tax?

MR. STEELE: Yes, it probably would.

MR. SULLIVAN: At the time you did not pay taxes, you had information in your own mind or in your possession of the income you have received; correct?

MR. STEELE: I did.

MR. SULLIVAN: You had posse ssion of all of the rules and regulations required of the IRS Codes.

MR. STEELE: I did.

MR. SULLIVAN: And you had the money.

MR. STEELE: I did.

MR. SULLIVAN: And you still did not pay any taxes.

MR. STEELE: That's right.

(Formal hearing transcript, March 5, 1992, page 85 line 10 through page 87 line 11.)

6. Applicant admitted that failure to pay the tax and failure to file income tax returns were violations of IRS regulations.

7. Money available for payment of taxes was spent by the Applicant. Such behavior shows lack of reasonableness, neglect of financial responsibilities and neglect of professional obligation as an accountant. Applicant was more than 35 years of age and had been employed for more than 15 years as an accountant.

8. Applicant was neither candid in his application nor before the Committee.

9. Despite required disclosure of any and all civil action, Applicant failed to disclose his suite against the United States, Robert G. Steele v. United States of America, Cause No 83-125-M-CCL, on his application for certification.

10. Despite required disclosure of any other information having bearing on character and fitness, Applicant omitted any reference to two criminal investigations of him by the IRS in the early and latter 1980's.

11. The Applicant applied to take the February, 1991 exam, even though he was not eligible; to become eligible he had to receive a waiver from the faculty. Applicant made no mention of his conditional application until the issue was raised by the Administrative Assistant to the Committee.

12. The materiality of the Applicant's omissions were significant.

13. Applicant's actions in application hearings, and gathering evidence, show him to be a person of questionable integrity. He shows neglect of financial responsibilities, neglect of professional responsibilities, and has made false statements including omissions. Based on Applicant's omissions in the application process and on evidence adduced in the hearings process, the Committee finds that the Applicant lacks sufficient moral character and if admitted to the practice of law would be unable or unwilling to act in accordance with the standards set forth in the Montana Rules of Professional Conduct, fairly, discretely, honestly, reasonably, and with unquestionable integrity.

Based upon the foregoing, the Committee makes the following:

CONCLUSIONS OF LAW

1. The Applicant has the burden of proving he is possessed of good moral character and general fitness to practice law.

2. The Applicant had been given ample opportunity to present evidence and testimony as provided by the rules of the Committee.

3. The Applicant had not proved that is possessed of good moral character and general fitness to practice law.

4. The Committee is charged with determining within its own opinion and discretion whether or not applicants' conduct would cause a reasonable person to believe that such applicant would, if admitted to the practice law in Montana be unable or unwilling to act in accordance with the standards set forth in the Montana Rules of Professional Conduct,

fairly, discretely, honestly, reasonably, and with unquestionable integrity in all matters in which he or she acts as an attorney at law.

5. All procedural requirements set forth in the rules of the Committee have been followed.

6. The Committee has relied on the entire record before it, which includes all testimony given at all hearings and all documents submitted to the Committee. The Applicant has had access to and knowledge of all of the evidence relied upon by the Committee.

7. The Applicant has neglected financial responsibilities, neglected professional obligations, and had made false statement, including omissions.

8. The Applicant's prior and present conduct would cause a reasonable person to believe that he is unable or unwilling to act fairly, discretely,

honestly, reasonably, and with unquestionable integrity in all matters in which he acts as an attorney at law.

Based upon the foregoing Findings and Conclusions of Law, the Committee now issues its:

FINAL DECISION

The Applicant, Robert G. Steele, is not certified by the State Bar committee on Character and Fitness for admission to the State Bar of Montana for the reason that the Applicant has not demonstrated good moral character and general fitness to practice law.

DATED this 24th day of August, 1992.

COMMITTEE ON CHARACTER AND FITNESS OF THE STATE BAR

APPENDIX B

No. 92-465

IN THE SUPREME COURT
OF THE STATE OF MONTANA

1993

IN RE THE PETITION OF
ROBERT G. STEELE

APPEAL FROM: ORIGINAL PROCEEDING

COUNSEL OF RECORD:

For Appellant:

Larry M. Elison, Attorney at Law, Missoula, Montana

For Respondent:

K. Paul Stahl, Attorney at Law, Helena, Montana

Submitted on Briefs: August 5, 1993

Decided: December 22, 1993

Justice Fred J. Weber delivered the Opinion of the Court.

Petitioner Robert G. Steele appeals from the final decision of the State Bar

of Montana Committee on Character and Fitness (Committee) refusing to certify petitioner to this Court for admission to the State Bar of Montana. We affirm the decision of the Committee.

The sole issue presented is whether the Committee properly concluded that Mr. Steele is unfit to practice law in the State of Montana.

Robert G. Steele (Steele) submitted his application for admission to the State Bar of Montana on November 15, 1990, intending to take the February 1991 bar examination. On December 26, 1990, after a review of his Character and Fitness application, the Committee sent a letter to Steele advising him that it had "serious concerns" about his convictions for driving under the influence (DUI) and tax liens and requested that Steele provide the Committee with DUI records and dispositions, copies of Internal Revenue

Service (IRS) deficiency notices and copies of his responses to the IRS.

The Committee also noted that Steele had applied to take the February 1991 exam but would not be graduating from the University of Montana School of Law until the Spring of 1991. Steele was asked to submit a written explanation of why he had applied to take the February examination when he would not have fulfilled the graduation requirement until June. Steele responded by telephone that he had applied for a faculty waiver for a required one-credit course which he had attempted to replace with an "independent study" project. He stated that he would not know until February 4, 1991, whether the faculty would grant his request for a waiver. After the faculty denied his request for waiver, Steele requested that the State Bar allow him to take the examination without meeting the graduation

requirement and he was advised that this was not possible without permission from this Court.

On February 13, 1991, the Committee met to review Steele's application and decided not to certify Steele for the bar examination and admission due to the concerns previously noted. The Committee advised Steele that he could appear in person for an informal hearing regarding the decision. Steele accepted. The Committee's position did not change following the informal hearing.

The Committee was particularly concerned with Steele's interaction with the IRS. Steele is a Certified Public Accountant licensed to practice in Montana and is thus conversant with IRS regulations and procedures. Steele did not file timely personal income tax returns for tax years 1982 through 1986. With penalties and interest added, Steele's personal tax

liability to the IRS was greater than $208,000 at the time of the informal hearing.

Steele provided an authorization for disclosure and waiver for the Committee's use in obtaining relevant information from the IRS. He also submitted numerous documents to the Committee demonstrating his tax protest activities in the early 1980s. Most of these documents consisted of correspondence to and from members of the Montana Congressional delegation.

During the time between the request for the informal hearing and May 1, 1991, the date of the hearing, Steele made offers in compromise for his tax liability, offering slightly more than 1% in compromise of his federal and state taxes owed. At the hearing, Steele presented copies to the Committee of his written offers to these agencies and discussed his difficulties with the IRS in

more detail:

> I have an offer and compromise that I mailed off to the federal government for all the back taxes. I don't know if they will accept this offer and compromise, but it's the first time that I have been able to offer anything. I am only offering what I can afford to pay here. I am in hopes that if they don't accept this offer, another one can be worked out. And here is the same thing with the State of Montana.
>
> I have sat down and I have talked to these people. I have met with the Internal Revenue agents. They understand. They have no grip with me. As a matter of fact, they offered to -- They wanted me to go to work for them, and I have agreed to do work for them. They told me they will pay me for both my time and my expenses, and I have agreed to do that. I have to assume from that that they have a certain amount of trust in me as well.

Steele responded to additional questions from Committee members pertaining to his tax liability and his tax protest activities, including questions concerning his involvement with

the Golden Means Society, a group which advocated not filing tax returns on the basis of constitutional rights and which no longer exists. He testified as follows:

> MS. BRANDBORG: In working with those people in the Golden Means Society, when people would come to you as an accountant and ask your advice, what type of advice were you giving, and did it essentially follow the same pattern that you followed in refusing to pay?
>
> MR. STEELE: . . . We didn't refuse to pay taxes. We refused to file a return with the information that was on there. The answer to your question is, no, I didn't get into a professional advisory capacity, unless it was in the realm of my expertise in the tax law. And there was a lot of that, an awful lot of that.
>
> In fact, I primarily was preparing tax returns for people who hadn't filed for a while. I was preparing these returns through their records and getting them up to date, currently.
>
> I, myself, wanted to find out what basis there was to a lot of the constitutional challenges; and I wrote those letters and took those stances. "Example only," I wrote on the

> first return that I filed, requesting assistance; and I got quite a few answers from different senators that were encouraging our position at that time.

Steele testified that in 1987, after certain tax reform legislation was enacted, he finally filed returns for the years 1982-1986. He stated that after numerous tax court appearances, he was convinced that his tax protest methods were not going to work. He also testified that he felt his efforts had been helpful in changing the tax laws.

At the request of the Committee, Steele provided an authorization to disclose information about his income tax and "other matters" for tax years 1982 through 1990 and his permission to discuss an "Agreement to Assist IRS" with Larry Huggins, an IRS investigations officer from the Missoula IRS office. The District Counsel for the IRS in Montana responded

in writing to the Committee's request for information, stating that the IRS opposed Steele's admission to the State Bar of Montana. The letter also stated that a memorandum had been circulated to IRS employees in Montana asking for their input regarding the request and that several memoranda were received in respo nse from IRS employees who had dealt with Steele and copies of such were attached to the letter. The Committee also was informed that Steele had never been employed by the IRS, but that he had agreed to work with the IRS in a special capacity and that he had provided such services to the IRS.

The letter noted the following about Steele's dealings with the IRS: (1) that he had been a member of the Golden Means Society which advocated violation of the tax laws; (2) that he failed to timely file income tax returns for tax years 1982

through 1986 and only filed them after entering law school; (3) that his tax liability was in excess of $200,000 and that he had made no effort to pay any of the taxes when he was earning a substantial salary as a CPA; (4) that he encourages his clients to ignore the IRS Examination Division during its audit procedures and to request conferences with the Appeal's Division without a meaningful audit and delays resolution of cases pending before the Tax Court until the eve of trial, a tactic which he apparently believes will obtain more favorable results for his clients; and (5) that his actions indicate that he does not believe he is required to follow the Internal Revenue laws of the United States.

One of the attachments to the letter stated that Steele had been the subject of two IRS criminal investigations in the 1980's although each case resulted in a

decision by the IRS not to prosecute. This was the first knowledge the Committee obtained about the criminal investigations. One of the criminal investigations, in which Steele was designated a co-conspirator because of his affiliation with the Golden Means Society, concerned an alleged conspiracy to impede and impair the IRS in assessment and collection of taxes. Steele testified that he did not timely file tax returns because a taxpayer under criminal investigation is not required to file returns until the investigation is resolved. Steele refused to voluntarily file tax returns other than "5th amendment constitutional" tax returns until his criminal case was resolved. The IRS does not consider these to be actual returns as they do not list income and deductions.

The second criminal investigation centered around Steele's failure to pay taxes due and owing for 1982 through 1986

after he filed the actual returns in 1987. Although the IRS suspected that Steele had transferred property and filed false financial statements with the IRS to preclude paying taxes, the IRS later determined that Steele had not falsified any documents or secreted away funds in order to avoid paying the IRS and that Steele had spent all his funds for personal reasons rather than making estimated tax payments. The revenue officer handling Steele's returns note she had "minimal cooperation" from Steele.

In a letter dated August 9, 1991, Steele responded to the information disclosed by the IRS. On August 23, 1991, the Committee provided formal notice to Steele by certified mail of its denial of certification for admission to the State Bar of Montana. The Committee stated the following as reasons for denial:

> Unlawful conduct, as evidenced by your DUIs and you failure to pay taxes;
>
> Making of false statements including omissions as shown by your failure to disclose the IRS's criminal investigations of your activities;
>
> Abuse of legal process as reported in IRS District Counsel's letter of July 26, 1991;
>
> Neglect of financial responsibilities as shown by you tax liens; and
>
> Neglect of professional responsibilities as evidenced by your failure to adhere to the tax laws even though you are fully aware of them in your capacity as a CPA.

Pursuant to the Rules of Procedure of the Committee on Character and Fitness, Steele formally responded to each of the five reasons given by the Committee for denial of certification and filed a Request for Reconsideration and Hearing.

A reconsideration hearing was held on March 5, 1992, to allow Steele to present evidence to support his application for

admission. Prior to the hearing, Steele provided additional information to the Committee, including letters and affidavits in support of his application for admission and notice that his offer of compromise had not been accepted by the IRS. Steele also had a chemical dependency evaluation performed on September 19, 1991 and had the evaluation results forwarded to the Committee.

After the hearing, Steele was allowed to depose two additional IRS employees, submit additional interrogatories to one of the witnesses at the hearing and to submit other additional materials. On July 22, 1992, the Committee met to review Steele's application and again denied his application. Formal findings and conclusions were issued on August, 24, 1992. Steele challenged several of the Committee's findings and conclusions.

Further facts will be provided as

necessary throughout this opinion.

Did the Committee properly conclude that Mr. Steele is unfit to practice law in the State of Montana?

The rules for admission to the State Bar of Montana provide that the burden of proof is on the applicant to demonstrate good moral character and general fitness to practice law in an appeal from a decision of the Committee on Character and Fitness of the State Bar of Montana:

> Every Applicant for the Montana Bar examination shall be of good moral character. The applicant shall have the burden of provingby clear and convincing evidence that he or she is possessed of good moral character. The Committee shall certify the Applicant to the Clerk of the Supreme Court unless prior or present conduct of the Applicant of which the Committee becomes aware would in the opinion and discretion of the Committee cause a reasonable person to believe that such

> Applicant would, if admitted to practice law in Montana, be unable or unwilling to act in accordance with the standards set forth in the Montana Rules of Professional Conduct, fairly, discreetly, honestly, reasonably, and with unquestionable integrity in all matters in which he or she acts as an attorney at law.

Rules of Procedure of the Committee on Character and Fitness (1991), Section 3(a) (as amended June 9, 1992); now Section 4(a) (amended March 25, 1993). The standard of review used by this Court in reviewing Committee decisions to deny admission and certification to take the Montana bar examination is as follows:

> Upon reviewing a final decision of the Character and Fitness Committee we will conduct an independent review of the entire record to determine if the Committee erred. When the facts are admitted and uncontested, as they are in this case, we will give due consideration to the inferences drawn by the Committee, including inferences concerning rehabilitation and mitigation. Consideration will be given to the recommendation

> of the Committee as to whether the applicant is of the requisite good moral character and fitness to be admitted to the Montana Bar. The Committee will have heard testimonial evidence and will have had the opportunity to observe the demeanor and judge the credibility of the applicant or other witnesses. However, inasmuch as we are designated by the Montana Constitution to ultimately make this decision, we will affirm the Committee's recommendation if we determine it was correct, and we will reverse if we determine the Committee erred. Our review will be in accordance with the existing standards for admission, taking into consideration the whole record.

In re the Matter of Matt (1992), 252 Mont. 345, 348-49, 829 P2d 625, 626 (emphasis in original) (quoting In re the Matter of Pedersen (1991), 250 Mont. 325, 328-29, 820 P2d 1288, 1290).

Although the Montana Constitution gives this Court exclusive authority to regulate bar admissions in Montana, such authority is subject to the limits imposed

by the United States Constitution. The United States Supreme Court had held that, in making determinations of an applicant's character and fitness to practice law, the applicant must be afforded adequate due process of law. Willner v. Committee on Character and Fitness (1963), 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224. The Court stated in Willner, 373 U.S. at 107. 83 S.Ct. at 1182, 10 L.Ed.2d at 232:

> [I]n all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence.

Steele contends that he was not afforded due process because he either did not receive notice of the Committee's basis for its decision, or he received notice after the hearing. He also contends that due process was not afforded him

because supporting documentation was either absent or based on constitutionally protected activities which Steele had engaged in prior to attending law school.

In support of his claim that he did not receive due process, Steele contends that the Committee did not identify or allow him to address omissions in his application and did not identify any false statements, even in the final decision. He also claims that the Committee did not follow consistent rules of evidence.

We first note that the Committee is not bound by formal rules of evidence and may, in its discretion, take evidence in other than testimonial form, having the right to rely upon records and other materials furnished to the Committee in response to its request for assistance in its inquiries. The Committee may, in its further discretion, determine whether evidence to be taken in testimonial form

shall be taken in person at the hearing or upon deposition, but all testimonial evidence shall in either event be taken under oath. A complete stenographic record of the hearing shall be kept, and a transcript may be ordered by the Applicant at the Applicant's own expense.

Rules of Procedure of the Committee on character and Fitness, Rule 5(i) (March 25, 1993).

Steele's objection here seems to center around the evidence supplied by IRS employees as previously set forth in this opinion; he states that their "inability to specify either because of confidentiality or lack of memory leaves Steele in an informational and evidentiary wasteland." Therefore, Steele claims that the Committee's findings should identify the portions of the record which the Committee relied on to support each finding to prove that it did not rely on improper evidence.

Because of the independent character of our review, such detailed fact-finding is unnecessary. From our review of the entire record, we find evidence to support the Committee's finding as set forth in the following discussion.

One of the reasons for denying Steele's certification is that Steele made false statements in his application. False statements include omissions. Thus, Steele's argument that the Committee failed to identify any actual false statement is not relevant. We focus on the omissions in Steele's application. The application form asks the applicant to list any civil proceeding in which the applicant has been a party. In answering this question, Steele disclosed that he had sued a client in 1978 for nonpayment of a fee for professional services, yet he did not disclose a more recent civil suit against the IRS which had proceeded to the

Ninth Circuit Court of Appeals. More importantly, Steele did not inform the Committee about two criminal investigations that the IRS had initiated against him the 1980s. Moreover, despite providing the Committee with a two-inch sheaf of paper after the Committee inquired into his dealing with the IRS, Steele continued to withhold information about the criminal investigation. The Committee found out about the IRS after the informal hearing.

Steele contends that because the application for admission did not specifically request him to list any known criminal investigation, it cannot be an omission to fail to include that which is not specifically requested. However, the application does require an applicant to disclose any other information not already given having a bearing on character and fitness. Furthermore, this request is conspicuously located above the applican-

t's signature line. It would be impossible for the application to ask every conceivable question which would cover the conduct of every applicant. That is one of the reasons for the general query into any other information having a bearing on character and fitness.

Steele also claims that since he identified the IRS investigator, Larry Huggins, as a person with whom he had been in contact, the Committee could then easily find out about the criminal investigations. Steele's reference to Huggins was included in the following written response to a question on the application asking if there are any unsatisfied judgments outstanding against the applicant:

> I am delinquent on income tax payments. I am current on return filings but owe on past amounts due. This is because I filed late for the years 1982-1986 in

1987. My original returns for those years were protest returns. This was because, in my practice as a CPA, I became aware of severe problems with the income tax system. Some of these problems, as to fairness, have been corrected by Congress in the 1986 Reform Act. I believe that my efforts contributed to the reasons for the mandate President Reagan gave Congress to reform the Income Tax System.

Nevertheless, I realize that the taxes are due, owing, and should be paid. I an in contact with Mr. Larry Huggins, IRS Missoula, (406) 329-3681. It is my intention to begin to pay these taxes as I return to the full-time work force after law school. I have provided IRS with financial statements and Mr. Huggins seems to be satisfied that this plan will work.

A contributing factor to not being able to pay these taxes is that I lost all my Capital in the Stock Market about 1983. While this had diminished by ability to pay, it had not helped the tax problems because Capital losses are only allowed to offset ordinary income to the extent of $3,000 .00 per year. They are also not deductible for self-employment tax purposes. I have learned however, that IRS has a compromise procedure for situations like this and I intend to utilize that procedure

> as soon as I have something to offer. The total amount due, both to State and Federal, currently approximates $150,000.00, including penalty and interest. A large portion of this would be currently dischargeable in bankruptcy. I do NOT intend to resort to bankruptcy since the debt is a legitimate result of a mistake I made.
>
> The mistake, however, was instrumental in my decision to enter law school. I believe that I am now equipped with an understanding of law and taxes to allow me to assist clients in this area where few attorney's [sic] wish to specialize. The IRS is no longer an enemy but rather an agency in need of guidance from a Congress enlightened by attorney's [sic] with knowledge and experience in this realm. A system of taxation that meets the needs of our government and yet inflicts the least intrusion into the lives of those who pay it should be the goal of congress. A populace with the expertise available to help them function within this system is the foundation to make if work. My goal is to help stabilize this foundation. In this respect, I pledge to be a better example in the future.

This statement is not a candid disclosure of the extent of Steele's tax difficulties. Although is provides Huggins' number,

it omits any mention that Huggins investigated Steele for criminal conduct. Further, it states that Steele lost his capitol in "about 1983," but it does not explain why Steele did not attempt to preserve funds after that time for future payment to the IRS.

Steele further argues that the following finding of fact was not material:

> 11. The Applicant applied to take the February, 1991, exam, even though he was not eligible; to become eligible he had to receive a waiver from the faculty. Applicant made no mention of his conditional application until the issue was raised by the Administrative Assistant to the Committee.

The record contains a memorandum written by Jan Weber, the Administrative Assistant to the Committee, on December 26, 1990, after questioning Steele about his eligibility to take the exam. It also contains

other memoranda indicating that, after Steele learned that he would not graduate until spring semester, he inquired whether he could still take the exam and was advised that this would require permission from this Court. While this omission by itself may not be a serious omission under the particular circumstances of this case, it is cumulative and, therefore, it becomes material.

We conclude that Steele was adequately informed of the nature of evidence against him and was afforded an adequate opportunity to rebut the evidence. He knew from the time of the Committee's first letter, dated December 26, 1990, that the Committee had concerns about his tax liens and DUIs. After further communication with Ms. Weber and the Committee, Steele knew the Committee was concerned about his ineligibility to take the February examination, he knew the Committee was concer-

ned about his problems with the IRS and he knew the Committee was concerned about the civil case which he had not disclosed. After the Committee inquired into the tax lien matter, other information from the IRS was disclosed and Steele was questioned about this information. He responded to all these concerns either informally or formally. He had excess to and reviewed the Committee's complete file. Steele was given adequate opportunity to explain and rebut the evidence.

We conclude that the materiality of the omissions was significant. Furthermore, Steele did not facilitate information gathering about his dealing with the IRS either in his testimony before the Committee or in other numerous communications with the Committee. The Committee determined that Steele "was neither candid in his application nor before the Committee." The record fully supports this finding.

The record also establishes that the Committee gave Steele every opportunity to present evidence and
that it treated Steele fairly throughout the post-denial process.

Throughout this proceeding, however, Steele's conduct demonstrates an attempt to make light of or to downplay the significance of the facts relating to his tax protest activity, his failure to pay taxes and his interaction with the IRS. In our view, this is a significant basis for the Committee's finding that Steele was neither candid in his application nor before the Committee. The Committee also had the advantage of personal observation of Steele and other witnesses to determine the candor and credibility of each.

In addition to finding that Steele had made "false statements including omissions," the Committee made a number of additional conclusions with regard to the

filing of tax returns and payment of taxes for the years 1982 through 1986. These findings showed that Steele owed the IRS more than $209,000 and had made an offer of compromise of $3,544; similarly, he owed the State of Montana $20,824 and had made an offer of compromise of $381. The Committee found that Steele had never denied the tax was due and owing, that the money which he had for payment of the tax was spent otherwise and that he acknowledged this was a violation of the law. The key conclusion in paragraph seven was that the behavior showed lack of reasonableness, neglect of financial responsibilities and neglect of professional obligations as an accountant. Following are the conclusions of the Committee on this aspect:

> 5. The Applicant failed to pay taxes for years 1982, 1983, 1984, 1985, and 1986. Applicant presently owes the [IRS] more that $209,000; he made on offer

of compromise to the IRS of $3,544, slightly more than one percent of the amount owed. Applicant presently owes the State of Montana Revenue Department more than $20,824; he made an offer of compromise of $381, which is slightly more than one percent of the amount owed. These offers in compromise were made April 30, 1991, after the Committee made inquiry. The Applicant never denied that the tax was due and owing; money available to pay a portion of the tax was spent otherwise. Applicant further acknowledged this was a violation of the law . . .

6. Applicant admitted that failure to pay the tax and failure to file income tax returns were violations of IRS regulations.

7. Money available for payment of taxes was spent by the Applicant. Such behavior shows lack or reasonableness, neglect of financial responsibilities and neglect of professional obligations as an accountant. Applicant was more than 35 years of age and had been employed for more than 15 years as an accountant.

13. Applicant's actions in application, hearings, and gathering evidence, show him to be a person of questionable integrity. He shows neglect of financial responsibilities,

> neglect of professional responsibilities, and has made false statements including omissions. Based on Applicant's omissions in the application process and on the evidence adduced in the hearings process, the Committee finds that the Applicant lacks sufficient moral character and if admitted to the practice of law would be unable or unwilling to act in accordance with the standards set forth in the Montana Rules of Professional Conduct, fairly, discreetly, honestly, reasonably, and with unquestionable integrity.

Steele contends that the Committee based these findings in part on constitutionally protected activities which he had engaged in prior to attending law school. He argues that the Committee could not base any part of its decision on his exercise of free speech for speaking out against the IRS and the income tax laws, that it could not base any part of its decision on his association with the Golden Means Society because of his right of freedom of association, and that it could not base any part of the decision on

his right of freedom of assembly for his presence in a group of persons assembled to protest the foreclosure of a family store. We find no evidence that the Committee considered any of these activities in making its decision except to the extent that he was not candid in discussing them.

From our review of the record, we affirm the conclusions with regard to the nonpayment of taxes, the offers in compromise, and the other essential elements as above-quoted. From the record it is somewhat difficult to determine if Steele acknowledged that his conduct was a violation of the law. Unfortunately Steele did not give straightforward answers to questions asked by the Committee. Following is a portion of his testimony:

> MR. SULLIVAN: Let me ask you: Did you actually sit down and keep figures for your income,

for deductions, and compute what a tax would have
been in 1982?

MR. STEELE: No, I did not do that.

MR. SULLIVAN: Why is that?

MR. STEELE: I believed that would never be necessary. I believed it was all going to change. I believed that the IRS was going to see the error of their ways and we were going to have a new tax system.

MR. SULLIVAN: And you believed that the government was not going to seek to collect what they felt was your legitimate tax due and owing for 1982 on through those years?

MR. STEELE: I believed that at some time there would be a settlement. You know, at the time, I was prepared to lose, and at that time, I had some money and I was investing at
that time. If they could show me where we were wrong and convince me that we were wrong, I was willing to file the return; and I had the money at that time to pay it.

MR. SULLIVAN: Maybe my question isn't very clear. I get the impression that back then you felt that it was an invasion of privacy to provide all of this information about earnings and

your deductions, but I am a little unclear. Are you saying it was a violation of the constitution to tax you?

MR. STEELE: Of course not.

MR. SULLIVAN: So did you set aside any money to pay tax, or is it your position that you owed no tax?

MR. STEELE: No, no, no. We were wanting a better form of taxation; not no taxes. I mean, that's ridiculous. A flat tax, like it's been proposed, a national sales tax, something like that, that wouldn't be an intrusion into privacy. [Emphasis supplied]
I had the money. I didn't put it in a trust fund and keep it aside for the IRS, and I eventually ended up losing most of that money in my investments. At that time, it was not a problem with me that I was going to have to pay these taxes, pay some taxes of some kind.

While the record is not as clear as it might be as to Steele's acknowledgement that this conduct was a violation of the law, we conclude there is sufficient evidence to support that conclusion and the further conclusion that Steele admit-

ted that the failure to file tax returns was a violation of IRS regulations.

The emphasis in the above quote illustrates the difficulty of obtaining a direct answer from Steele. In addition, from the above testimony it appears that Steele did not intend to pay the tax owed but intended to settle or "compromise" with the IRS at some future point.

When the first criminal investigation was resolved, Steele filed tax returns for the years 1982 through 1986. Because Steele did not keep records of income and deductions for tax purposes, his tax liability is based only on estimated income for those years.

The second criminal investigation related to the IRS's suspicion that Steele had transferred or hidden assets in an attempt to avoid paying the tax due after he finally filed the returns. The IRS did not prosecute this either because it could

not determine that Steele had acted improperly.

The record demonstrates that Steele neglected both his financial and professional responsibilities. The record also demonstrates that at the time he was refusing to pay taxes, Steele did intend to effect some sort of a compromise for the years in question. The record does not disclose any willingness on the part of Steele to pay the full amount of taxes owed for the years 1982 through 1986. As a CPA, Steele was and is aware of the tax laws and the procedures required in connection with the filing of returns and payment of taxes. We affirm the findings and conclusions of the Committee as above set forth indicating a neglect on the part of Steele of both financial and professional responsibilities.

We have reviewed the entire record according to the standards set forth in

Pedersen and in Matt. We conclude that the record supports the decision of the Committee. We further conclude that Steele was afforded due process. We hold that Steele is unfit to practice law in Montana.

Affirmed.

Justice Terry N. Trieweiler dissenting.

I dissent from the majority opinion. After a review of the entire record provided by the Committee for Character and Fitness, I conclude that the Committee erred when it denied Robert Steele's application to take the State Bar Examination.

Specifically, I concluded that those findings of fact relied on by the Committee to support its denial of Mr. Steele's application either lacked sufficient specificity so that they can be reviewed, or are unsupported by substantial eviden-

ce.

The Committee's Findings No. 5 to the effect that Steele acknowledged violating the law is incorrect. While it is true that one member of the panel examined him at length for the purpose of establishing that he knowingly violated the law, it is clear from that examination that the panel member did not understand Steele's responses. In sum, Steele testified that he did not file tax returns during the early 1980s because he was under criminal investigation. He had money with which to pay his taxes during those times, but based on his interpretation of the law, concluded that he would not owe any taxes. Then the investigation was concluded, he filed a tax return. However, by then, the money with which to pay the taxes owed had been lost due to poor investments. Steele never stated that his failure to pay the taxes was a violation of the law. The

whole point of his testimony was that he did not believed that amount was due, and that the law did not require that he file tax returns because he was under criminal investigation by the Internal Revenue Service.

Steele admitted that failure to pay taxes if a taxpayer acknowledged that they were due, and failure to file income tax returns if a taxpayer had no legal excuse for not doing so, would be violation of the law. But he vigorously denied that either circumstance pertained to him during the times that he failed to pay taxes or file returns. Therefore, the Committee's Finding No. 6 is taken out of context, distorts the essence of his testimony, and is also clearly erroneous.

In Finding No. 7, the Committee stated that because Steele no longer has the money available with which to pay his taxes, he was financially and profession-

ally irresponsible. Unsuccessful investments are not the equivalent of financial irresponsibility, and it is peculiar that members of this profession would find him professionally negligent as an accountant when he had never had a similar complaint filed against him, nor had he ever been disciplined as an accountant.

The Committee's Finding No. 8 states that Steele was neither candid in his application nor before the Committee. I find no indication in the record that Steele lacked condor during his testimony before the Committee. Furthermore, since the Committee's finding lacks any specificity and provides no example of Steele's lack of condor, I conclude that it is insufficient as a basis for denying his application to take the bar exam or be admitted to a profession for which he has studied for over three years.

The Committee's Finding No. 9 states

that Steele failed to disclose his suit against the United States on his application for certification. While that may be true, it is hardly a material basis for denying his application. Steele filed the suit and prevailed in the suit, and it had absolutely no adverse bearing on his moral character or general fitness to practice law. Furthermore, all materials relating to the suit were fully provided to the Committee at their request prior to the time any decision was rendered. This finding does not support the Committee's conclusion that Steele was unfit to practice law.

In its Finding No. 10, the Committee stated that in spite of its requirement that Steele disclose information bearing on his character and fitness, he failed to identify two criminal investigations conducted by the IRS. However, neither criminal investigation resulted in any

charge that Steele violated any law or federal regulation. Neither did any investigation lead to any complaint that Steele violated any professional rules established for certified public accountants. How then did either criminal investigation have any bearing on Steele's fitness or character? Have we established a new presumption in our law that because someone is investigated, that investigation provides evidence of unfitness or poor character? If so, then this opinion reflects a major change in the traditional principles of justice to which our courts have previously subscribed.

In its Finding No. 11, the Committee stated that Steele applied to take the February 1991 exam, even though he was not eligible. However, the record indicated that when Steele made application to take the February bar exam he thought he would be eligible. When he filed the applicati-

on, he indicated that he was still attending law school. All applicants for the bar exam anticipate their graduation date. Developments subsequent to Steele's application required that he take one additional course, which he did. This unforeseen series of events has no bearing on his fitness to practice law.

Other than these finding, there is no factual basis in the Committee's decision for denying Steele's application to practice law. Since I conclude that these findings are either unsupported by the evidence, or are inadequate bases for denying his application, I dissent from the majority opinion and would reverse the Committee's denial of Steele's application to take the bar exam and, if successful, subsequently practice law in the State of Montana.

Steele had been a certified public accountant for 20 years. During that time,

he represented many clients to their satisfaction. Because of his political and legal beliefs, he has been investigated by the IRS on two separate occasions, and has been involved in civil litigation with the IRS on one occasion. In spite of those investigations, he has never been charged with a crime, nor even accused of a crime. He has never been found to have committed any ethical violation nor charged with any ethical violation. In the only civil litigation in which he was involved, he prevailed, and it was determined that the government owed him money.

It is true that because of his poor investment history and misjudgment about his legal obligations, he owes a substantial debt to the federal and state governments. However, that debt continues to be his obligation and will presumably be enforced by the government to its satisfaction. It does not disqualify him morally

or render him unfit to take the bar examination. Steele is being denied the opportunity to practice the profession for which he has prepared for over three years because of unconventional political ideas and incorrect legal conclusions drawn prior to his admission to law school. To forever deny him the opportunity to practice a profession for which he is otherwise qualified based on these past mistakes is a substantial injustice.

Justice Karla M. Gray joins in the foregoing dissent.